

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON HUMAN SERVICES**

**Call to Order:** By **CHAIRMAN ARLENE BECKER**, on January 19, 2005 at 3:00 P.M., in Room 472 Capitol.

#### **ROLL CALL**

##### **Members Present:**

Rep. Arlene Becker, Chairman (D)  
Rep. Tom Facey, Vice Chairman (D)  
Rep. Don Roberts, Vice Chairman (R)  
Rep. Mary Caferro (D)  
Rep. Emelie Eaton (D)  
Rep. Gordon R. Hendrick (R)  
Rep. Teresa K. Henry (D)  
Rep. William J. Jones (R)  
Rep. Dave McAlpin (D)  
Rep. Tom McGillvray (R)  
Rep. Mike Milburn (R)  
Rep. Ron Stoker (R)  
Rep. Pat Wagman (R)  
Rep. Bill Warden (R)  
Rep. Jonathan Windy Boy (D)

**Members Excused:** Rep. Art Noonan (D)

**Members Absent:** None.

**Staff Present:** Susan Fox, Legislative Branch  
Mary Gay Wells, Committee Secretary

**Please Note.** These are summary minutes. Testimony and discussion are paraphrased and condensed.

##### **Committee Business Summary:**

Hearing & Date Posted: HB 117, 1/13/2005  
HB 183, 1/13/2005

Executive Action:

**HEARING ON HB 183****Sponsor:** REP. EVE FRANKLIN, HD 24, GREAT FALLS**Opening Statement by Sponsor:**

REP. EVE FRANKLIN opened the hearing on HB 183. Medicaid redesign proposed a waiver to improve ways to serve severely emotionally disturbed children. The bill requests the opportunity to apply for a home and community-based waiver which would give the state greater flexibility in how they can use the funds to serve a difficult part of our population.

***{Tape: 1; Side: A; Approx. Time Counter: 0 - 3.7}***

**Proponents' Testimony:**

**Chuck Hunter, Administrator, Child and Adult Health Resources Division, DPHHS,** explained that his Division spends about \$50 million annually serving the needs of seriously emotionally disturbed youth in Montana. The bill would allow them to seek a waiver from the federal Medicaid authorities to spend Medicaid money in a different way. They would like to serve the children closer to their homes and communities instead of where they are currently being served. He explained more about HCBS waivers. No new money is required because the federal government mandates it must be cost neutral. The process takes six months to a year to get a waiver approved by the federal government. The first year new services might be provided would be in 2007. At this time, the Division is serving about 9,000 children, but there are only about 300-400 children who are being placed in institutional settings each year. Approximately 500 children might be served under this proposed waiver.

***{Tape: 1; Side: A; Approx. Time Counter: 3.7 - 9.8}***

**Jani McCall, Montana Children's Initiative Providers Association,** testified that they stand in strong support of this bill. This will give providers greater flexibility in working with these children and their families.

***{Tape: 1; Side: A; Approx. Time Counter: 9.8 - 13.2}***

**Bob Olsen, Montana Hospital Association,** stated that his group stands in strong support of HB 183 and they are excited about keeping the treatment closer to home.

***{Tape: 1; Side: A; Approx. Time Counter: 13.2 - 15.1}***

**Jeff Folsom, AWARE, Inc.,** stood in strong support of the bill.

***{Tape: 1; Side: A; Approx. Time Counter: 15.1 - 17.7}***

**Kathy McGowan, representing four community health centers,** declared that the centers stand in strong support of this bill.

**{Tape: 1; Side: A; Approx. Time Counter: 17.7 - 19.5}**

**Opponents' Testimony:** None

**Informational Testimony:** None

**Questions from Committee Members and Responses:**

**REP. RON STOKER** inquired if, with these improved techniques, the children will live longer and have a fuller life as they attain adulthood. **Mr. Hunter** stated that he was not sure if the new services would translate into a better life for them. They really haven't had enough time for evaluation. This will definitely give the child and their family a better quality of life.

**{Tape: 1; Side: A; Approx. Time Counter: 19.5 - 21.7}**

**REP. JONATHAN WINDY BOY** desired to know what types of services would be available through these waivers. **Mr. Hunter** replied that they have yet to develop a list of services. They will work with consumers and families to develop such a list. They will certainly include certain therapies, medications and support systems.

**{Tape: 1; Side: A; Approx. Time Counter: 21.7 - 23.5}**

**CHAIRMAN BECKER** posed the question on whether these services would be available throughout the state. **Mr. Hunter** offered that there would be some variation. They are looking at what can be offered.

**{Tape: 1; Side: A; Approx. Time Counter: 23.5 - 24.5}**

**REP. WINDY BOY** asked for an amendment to the bill. **REP. FRANKLIN** responded that she would be willing to hear his ideas and consider anything that would make the bill stronger.

**{Tape: 1; Side: A; Approx. Time Counter: 24.5 - 26.1}**

**REP. MIKE MILBURN** sought the definition of a seriously emotionally disturbed child. **Mr. Hunter** offered his definition.

**EXHIBIT**(huh14a01)

**REP. MILBURN** inquired if there were definitive ages in the definition. **Mr. Hunter** replied that it goes up to age 18. There was also a difference below the age of six and then above the age of six.

**{Tape: 1; Side: A; Approx. Time Counter: 26.1 - 28.7}**

**REP. TOM FACEY** solicited the number of children being served out of the state. **Mr. Hunter** said that there are about 35 children.

**REP. FACEY** continued by asking if this would include the adjudicated children under this program. **Mr. Hunter** replied that an adjudicated child could be served under this program. The doorway for this program would be the SED diagnosis.

**REP. FACEY** asked for a chart that had previously been given to the committee from the Division. **Mr. Hunter** offered to bring a new chart with much better data.

**EXHIBIT** (huh14a02)

**REP. FACEY** mentioned that the federal government mandated the program be cost neutral. He questioned if it were going to be cost positive for Montana; for example, would Montana be able to reduce their cost a bit and expand the client base to serve more children. **Mr. Hunter** declared that is one of their goals.

***{Tape: 1; Side: A; Approx. Time Counter: 28.7 - 31}***

**Closing by Sponsor:**

The sponsor closed.

***{Tape: 1; Side: B; Approx. Time Counter: 0 - 0.3}***

#### **HEARING ON HB 117**

**Sponsor:** **REP. TOM MCGILLVRAY, HD 50, BILLINGS**

**Opening Statement by Sponsor:**

**REP. TOM MCGILLVRAY** opened the hearing on HB 117 which addresses asset transfer look back periods and penalty period waiver authority. Medicaid is a means-tested public assistance program to finance health and long-term care for people who could not otherwise afford it. Long-term care currently accounts for about one-third to one-half of all Medicaid expenses (\$51 billion per year). In Montana, long-term care takes 21% of all Medicaid dollars (\$140 million per year). The cost is about \$150 a day per person. But, he concluded, there was a problem. Some seniors take advantage of the inefficiencies in the Medicaid eligibility laws. HB 117 would curb this abuse. Montana currently allows seniors to qualify for Medicaid assistance if they have impoverished themselves by transferring financial or real assets to children or relatives. Thirty-six months after those assets have been transferred they would then be eligible for Medicaid assistance for long-term care. **REP. MCGILLVRAY** has had several clients in his financial planning business that have done this. These people's children are using Medicaid as an

inheritance insurance. He does not believe this is right or ethical. HB 117 would extend that look back waiver from 36 months to 60 months. Secondly, Montana currently imposes a penalty period, starting from the date of transfer, for those applying for Medicaid assistance for long-term care. HB 117 would change the penalty period from the date of transfer to the date of application for Medicaid assistance. The Department has estimated that on an average, eight months of nursing home care would be the responsibility of the individual who had transferred assets within that look back period. This would save approximately \$2.8 million a year.

**{Tape: 1; Side: B; Approx. Time Counter: 0.3 - 5.7}**

**Proponents' Testimony:**

**Hank Hudson, Administrator, Human and Community Services**

**Division, DPHHS**, explained that his Division performs Medicaid eligibility services. He spoke about the bill and what it would do. **Mr. Hudson** explained more fully the penalty portion of the bill. The penalty is based upon how much was given away, divided by how much the nursing home costs per month. For example, if \$10,000 were given away, and the nursing home cost is \$1,000/month, the person would have 10 months of ineligibility. They would be required to pay for the first 10 months of the nursing home cost. By changing the starting date of the penalty portion to the date of application for Medicaid assistance for long-term care, all people who had assets transferred would pay for at least the beginning portion of their nursing home care. He reiterated that Medicaid is for poor people. He did mention another bill (LC 2181) that was coming from the Senate. It is a companion bill to HB 117 and deals with insurance for long-term care. He handed in his testimony and a "Department Asset Transfer Survey" from which he had quoted.

**EXHIBIT (huh14a03)**

**EXHIBIT (huh14a04)**

**{Tape: 1; Side: B; Approx. Time Counter: 5.7 - 11.5}**

**Bob Olsen, Montana Hospital Association**, stated this his Association stands in full support of HB 117. He did explain that there is a hardship clause that would cover those who had special circumstances. Nursing homes rely on Medicaid for about 60% of their revenue. The State of Montana is funding health care for nursing homes to the tune of 60% of everything they do. That puts pressure on the nursing homes to find people who can pay for their care privately. As baby boomers retire, there are going to be more and more long-term care necessities. **Mr. Olsen** informed the committee that in Germany, they have a 10-year look back period.

**{Tape: 1; Side: B; Approx. Time Counter: 11.5 - 15.6}**

**Rose Hughes, Executive Director, Montana Health Care Association,** concurred with everything that Mr. Olsen had said. They also are in full support of the Senate bill which is coming.

**{Tape: 1; Side: B; Approx. Time Counter: 15.6 - 22}**

**Opponents' Testimony:**

**Claudia Clifford, advocacy consultant, AARP,** gave her testimony and handed in a copy.

**EXHIBIT**(huh14a05)

**{Tape: 1; Side: B; Approx. Time Counter: 22 - 27.8}**

**Mary L. Williams, Clancy, MT,** gave her testimony and handed in a copy.

**EXHIBIT**(huh14a06)

**{Tape: 1; Side: B; Approx. Time Counter: 27.8 - 31.8}**

**Dustin Hankinson, Missoula,** gave four reasons why he was opposed to the bill: (1) If people are desirous to transfer their assets, they will find a way around this bill; (2) Many people, in the middle class, will be hurt by this bill; 3) People who may have gifted their assets, but suddenly get sick before the penalty time is up, will fall through the cracks; (4) It is punitive to seniors.

**{Tape: 2; Side: A; Approx. Time Counter: 0 - 8.4}**

**REP. JONATHAN WINDY BOY, Chippewa-Cree Tribal Council,** stood in strong opposition to HB 117. He also spoke against LC 2181 because it is going to impose an enrollment fee.

**{Tape: 2; Side: A; Approx. Time Counter: 8.4 - 10.3}**

**Informational Testimony:** None

**Questions from Committee Members and Responses:**

**REP. RON STOKER** inquired what **REP. MCGILLVRAY** would advise his retired clients to do with a five-year look back waiver.

**REP. MCGILLVRAY** said he would advise his clients to buy long-term care insurance and do the responsible thing.

**REP. DAVE MCALPIN** posed two questions: "Is it not illegal to hide assets under the present law, and is the transfer of assets common?" **Mr. Hudson** clarified that to hide information or lie on a Medicaid application is a crime; however, to transfer assets is not a crime. The transfer of assets is not all that uncommon. This is from Exhibit 3.

**{Tape: 2; Side: A; Approx. Time Counter: 10.3 - 13.6}**

**REP. BILL WARDEN** wanted to know if this bill was a waste of time, and if the bill would be challenged in court. **Mr. Hudson** responded that while the federal government has been reluctant to issue these types of waivers, more and more states are beginning to look at the application process. He was encouraged that the new Federal Secretary of Health and Human Services, who is from Utah, seemed to be serious about allowing states some flexibility.

**{Tape: 2; Side: A; Approx. Time Counter: 13.6 - 15.4}**

**REP. FACEY** questioned how Medicare and Medicaid apply to different people. **Ms. Hughes** instructed the committee that Medicaid is for the poor and Medicare is an insurance program for seniors. She continued by saying that for Medicare, they need to be a skilled patient. They have 100 days coverage for skilled. Medicare pays all, up to the first 20-21 days, then the other 80 days is a big co-pay. If there is a supplemental insurance, that takes care of the co-pay. If the person was impoverished, they would apply for Medicaid.

**{Tape: 2; Side: A; Approx. Time Counter: 15.4 - 17.6}**

**REP. FACEY** speculated about a farmer and what would happen if he gave his land to his sons. **REP. MCGILLVRAY** reiterated that the proper way to handle these situations would be to recommend the farmer purchase some long-term care insurance. Those who have the means should pay for their own long-term care. The state should not have to pick up the bill.

**{Tape: 2; Side: A; Approx. Time Counter: 17.6 - 20.1}**

**REP. DON ROBERTS** stated that it is not right for people to gift large assets of money to their children and then ask the state to pay for their long-term care. He was in agreement with the bill.

**{Tape: 2; Side: A; Approx. Time Counter: 20.1 - 22.3}**

**REP. EMELIE EATON** inquired as to the cost of long-term care insurance. **REP. MCGILLVRAY** said there are some factors that enter into the cost. It depends on the age of the person and the kind of long-term care policy that is being purchased. Most long-term care packages cannot be purchased by anyone over 85. At age 80 and in good health, the cost might be \$5,000 to \$6,000 per year. At age 55, the cost might be \$600 to \$700 per year.

**REP. EATON** sought previous information concerning the 74 people statewide who transferred assets. She asked if these people would have been able to pay for their own long-term care.

**Mr. Hudson** referred to the survey (Exhibit 3). The average was \$52,000 in assets transferred. This would indicate that the

majority of those people could have afforded some kind of long-term care.

**{Tape: 2; Side: A; Approx. Time Counter: 22.3 - 28.1}**

**REP. MARY CAFERRO** requested the rate of Medicaid reimbursements to nursing homes. **Mr. Olsen** said the typical Medicaid rate is an average of \$132 per day. Every nursing home has a slightly different cost structure; but they typically run from \$150 to \$280. Nursing homes attached to hospitals are usually quite high.

**{Tape: 2; Side: A; Approx. Time Counter: 28.1 - 32}**

**REP. WINDY BOY** wanted to know how the penalty was figured. **Mr. Hudson** explained that the value of the assets that were transferred would be divided by the cost of the nursing home per month. That would give the number of months that one would be ineligible.

**{Tape: 2; Side: B; Approx. Time Counter: 0 - 1}**

**REP. CAFERRO** asked for some figures concerning people transferring assets. **Jeff Buska, Bureau Chief, Medicaid Services Bureau**, did not have these figures, but offered that the Asset Transfer Survey Summary (Exhibit 3) was the best data available. In terms of numbers, there are approximately 83,000 eligibles in the Medicaid program on a monthly basis and in 2003, there were 113,000 unduplicated eligibles. These statistics are in the annual report provided to the Legislature.

**REP. CAFERRO** inquired about how many people seek nursing home care. **Kelly Williams, Senior and Long-term Care Division, DPHHS**, informed the committee there are approximately 3,200 Medicaid eligibles in nursing homes. On an annual basis, an unduplicated account is a bit over 5,000 Medicaid eligibles.

**{Tape: 2; Side: B; Approx. Time Counter: 1 - 3}**

**REP. MCALPIN** questioned that, if the bill is calling for a five-year waiver, why, on Line 20, has the "five year" been stricken. **Susan Fox** suggested that technically it could be left in. **Mr. Hudson** explained that the form a waiver takes is part of the negotiation with the federal government. They would probably ask for the authority to look back 60 months and for the penalty period to be initiated upon application. The federal government would require them to have an implementation strategy to hold harmless those people who made the transfer before they knew about this law.

**{Tape: 2; Side: B; Approx. Time Counter: 3 - 5.6}**



**REP. ROBERTS** inquired about the most money or most assets ever transferred. **Mr. Hudson** offered that in the Survey, the largest amount was \$500,000. He had worked with families where there were larger sums, though there are other avenues available. There are spousal impoverishment laws that allow spouses to keep \$90,000 and the home. They are allowed to keep properties that generate income.

**{Tape: 2; Side: B; Approx. Time Counter: 5.6 - 7.1}**

**REP. STOKER** followed up on **REP. MCALPIN'S** question. **Mr. Hudson** explained that the "3-year, 5-year" that is being struck refer to the three years that currently is in place for individuals making transfers to other people. The five years is in reference to people moving assets into trusts which are handled differently. Sixty months seemed to be the outer limit that the federal government was interested in. **Susan Fox** offered that the time period is limited both by federal law or by the waiver. The only authority that the Department is granted in this bill is the authority in Section 3 to seek a waiver up to a 60 months look back period.

**{Tape: 2; Side: B; Approx. Time Counter: 7.1 - 9}**

**REP. PAT WAGMAN** requested information concerning patients with Alzheimer's disease or other degenerative diseases. **Mr. Hudson** said that there is a hardship provision for those things that occur unexpectedly. There is a provision that states if the transfer was clearly not for the purposes of becoming Medicaid eligible, that would be considered in the fair hearing process.

**REP. TERESA HENRY** inquired how long people stay in long-term care. **Ms. Hughes** did not have exact figures, but the time span in a nursing home averages 18-24 months. Some are there 10 years and some, two weeks. The average length of stay is going down due in part to assisted living, home care and other services being available. Only when they cannot be cared for someplace else, do they go to a nursing home. There is a great deal of rehabilitation done at the nursing homes. They stay for a short while and then return home.

**{Tape: 2; Side: B; Approx. Time Counter: 9 - 13}**

**Closing by Sponsor:**

**REP. MCGILLVRAY** informed the committee that there are three states that have applied for waivers: Connecticut, Minnesota, and Massachusetts. The federal government is quite open to these waivers. They realize the escalating cost of Medicaid. Those with true needs will be taken care of. His concern is that those, with means, are transferring their assets, and they, not the State, should be paying for their own long-term care.

**ADJOURNMENT**

Adjournment: 4:50 P.M.

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REP. ARLENE BECKER, Chairman

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MARY GAY WELLS, Secretary

AB/mw

Additional Exhibits:

**EXHIBIT ([huh14aad0.TIF](#))**